

## OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 01-06

September 28, 2001

**TO:** All Regional Directors, Officers-in-Charge and Resident Officers**FROM:** Arthur F. Rosenfeld, General Counsel**SUBJECT:** Fundraising Following Recent Tragedy

Due to the recent terrorists attacks of September 11, 2001, numerous groups have engaged in a considerable amount of nationwide fundraising activities. Information officers in the field will likely receive inquiries from the public as to how such fundraising activities may impact upon otherwise valid no-solicitation/no-distribution rules. This memorandum is to help guide responses to those inquiries.

Generally, an employer that enforces otherwise lawful no-solicitation/no-distribution rules against union solicitation, while permitting other similar kinds of solicitation activities, violates Section 8(a)(1) of the Act. However, an employer may lawfully permit a small number of isolated beneficent acts as exceptions to a valid no-solicitation/no-distribution rule.<sup>1</sup> In determining whether certain beneficent acts fall within this exception, the Board evaluates the "quantum of . . . incidents" involved.<sup>2</sup> Although the Board has not defined the exact number of incidents necessary to find unlawful discrimination, it has found that three incidents of employer condonation of charitable solicitation was permitted.<sup>3</sup> On the other hand, the Board has found discriminatory enforcement of otherwise valid no-solicitation/no-distribution rules where the incidents of charitable solicitation occurred frequently and/or for an extended duration of time.<sup>4</sup>

The circumstances of each case presented to the Regions will undoubtedly differ and decisions can only be made pursuant to the filing of charges and thorough investigation by the Regions. Nevertheless, information officers should respond to public inquiries by explaining the current state of Board law regarding the beneficent acts exception.

/s/  
A.F.R.

cc: NLRBU

Release to the Public

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<sup>1</sup> *Hammary Mfg. Corp.*, 265 NLRB 57, n. 4 (1982).

<sup>2</sup> *Id.*; *Be-Lo Stores*, 318 NLRB 1, 11 (1995), enf. denied in relevant part, 126 F.3d 268 (4th Cir. 1997).

<sup>3</sup> See, e.g., *Serv-Air, Inc.*, 175 NLRB 801, 801-02 (1969)(three incidents of condonation of employee in-plant charitable solicitation insufficient to find discrimination); *Seng Co.*, 210 NLRB 936 (1974) (same). Cf. *K-Mart Corp.*, 313 NLRB 50, 58 (1993)(three incidents of condonation sufficient to find discrimination where they all occurred on the same day the union solicitors were ousted).

<sup>4</sup> See, e.g., *Sandusky Mall Co.*, 329 NLRB No. 62, slip op. at 4 (1999), revd. 242 F.3d 682 (6th Cir. 2001)(nine different groups, including the United Way, Easter Seals and the American Lung Association, solicited in months preceding union's denial of access and four different groups, including the Salvation Army and the American Red Cross, solicited during same month employer denied union access); *Albertson's*, 332 NLRB No. 104, slip op. at 4 (2000)(Salvation Army solicited for about a month annually and several other groups solicited for periods ranging from a few days to a few weeks or even an entire month). See also *Price Chopper, Inc.*, 325 NLRB 186, 188 (1997), enf. 163 F.3d 1177 (10th Cir. 1998)(Salvation Army solicited on a daily basis from Thanksgiving to Christmas, Shriner solicited several times per week for a three to four month period, and one-time solicitation by both the Cub Scouts and a community group); *Great Scot, Inc.*, 309 NLRB 548, 549, 556 (1992), enf. denied, 39 F.3d 678 (6th Cir. 1994) (half-dozen charitable and civic organizations solicited for periods of several days, for three to six hours per day, throughout the year).